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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/520,476	03/08/2000	Aslam A. Malik	04906-013843	2209

7590

11/07/2002

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San Francisco, CA 94111-3834

EXAMINER

WILSON, DONALD R

ART UNIT	PAPER NUMBER
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1713

16

DATE MAILED: 11/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/520,476

Applicant(s)

MALIK ET AL.

Examin r

D. R. Wilson

Art Unit

1713

-- Th MAILING DATE of this communication appears on th cover sh t with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on 9/26/02 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 5,703,194 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Amendment

2. Applicant's request for reconsideration filed 9/26/02, has been fully considered with the following results.

3. Applicant has not provided a signed new oath and declaration as is required and the requirement is maintained as set forth below.

4. The double patenting rejection is overcome by the terminal disclaimer and the rejection is withdrawn.

5. The prior art rejections are maintained for reasons discussed below.

Previously Cited Statutes

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Oath/Declaration

7. This application presents a claim for subject matter not originally claimed or embraced in the statement of the invention. A supplemental oath or declaration is required under 37 CFR 1.67 for the reasons set forth in Detailed Action § 2 of the 8/14/00. Although applicant submitted an unsigned supplemental oath/declaration, the requirement is not filled due to the absence of signatures. In regards to applicant's comments regarding the instantly claimed invention being supported by the specification, this is not the issue. Although supported by the specification, the instant claims are not part of what was initially claimed as the invention. Thus, a supplemental oath/declaration is required to cover what applicant now considers to be part of the claimed invention.

Claim Rejections - 35 USC § 102(e)/§ 103(a)

8. ***Claims 20-26 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Hargis***

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Claim 27 is rejected under 35 U.S.C. 102(e) as anticipated by Hargis or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hargis in view of Examiner's Notice.

The bases of these rejections were stated in Detailed Action § 10-13 of the previous Office Action.

9. Applicant traverses the rejection on the basis of a declaration to have been submitted by the inventors providing evidence of conception and reduction to practice prior to the effective filing date of Hargis, which would have removed Hargis as prior art. However, the declaration has never been submitted and the rejections are therefore maintained. It is noted that several calls to applicant's representative to request a FAX of the declaration have not resulted to date in receipt of said declaration.

Action Is Final

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. R. Wilson whose telephone number is 703-308-2398.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on 703-308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-5408 for regular communications and 703-305-3599 for After Final communications. The unofficial direct fax phone number to the Examiner's desk is 703-872-9029.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-2351.



D. R. Wilson
Primary Examiner
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